

**TOWN OF RIVERHEAD  
COMMUNITY DEVELOPMENT AGENCY**

**Resolution # 13**

**RATIFIES AUTHORIZATION FOR SUPERVISOR, AS CHAIRMAN OF AND ACTING  
ON BEHALF OF THE COMMUNITY DEVELOPMENT AGENCY TO EXECUTE  
AGREEMENT WITH LIPA AND NATIONAL GRID TO UTILIZE PROPERTY AT  
EPCAL TO STORE VEHICLES AND EQUIPMENT NECESSARY TO RESPOND TO  
POWER OUTAGES CAUSED BY HURRICANE IRENE**

Councilman Dunleavy offered the following resolution,

which was seconded by Councilman Wooten

**WHEREAS**, on Friday, August 26<sup>th</sup>, 2011, the Supervisor, as Chief Executive Officer for the Town of Riverhead, declared a State of Emergency pursuant to Article 2B of the New York State Executive Law due to the projected path and intensity of Hurricane Irene forecasted to strike eastern Long Island as early as Saturday, August 27<sup>th</sup>, 2011, together with evidence of severe damage and destruction caused by sustained high winds, rain, and flooding suffered by coastal cities and towns along the path of the storm in the days preceding the declaration of a state of emergency for the Town of Riverhead; and

**WHEREAS**, in advance of Hurricane Irene, LIPA secured over 2,200 on-island and off-island line workers and tree crews to assist in projected restoration efforts; and

**WHEREAS**, as forecasted Hurricane Irene impacted eastern Long Island late Saturday evening and high winds and rains plagued the Town of Riverhead throughout the weekend ending late Sunday evening; and

**WHEREAS**, due to the sustained extreme high winds and rain, several town residents have been left without power; and

**WHEREAS**, due to the amount of power outages throughout the town and east end of Long Island, LIPA and National Grid wish to utilize a portion of the EPCAL property to store trucks and equipment to enable fifty five crews to swiftly respond to outages and assess major damage to transmission and distribution lines, substations and other infrastructure caused by Hurricane Irene; and

**WHEREAS**, the health, safety and welfare of the inhabitants of the Town of Riverhead is of paramount concern to the Town of Riverhead; and

**WHEREAS**, in order to protect the health, safety and welfare of the inhabitants of the Town of Riverhead, it was imperative that LIPA and National Grid act swiftly respond to outages and assess major damage to transmission and distribution lines, substations and other infrastructure caused by Hurricane Irene and restore power to the residents of the Town of Riverhead; and

**NOW, THEREFORE, BE IT RESOLVED** that the Town Board of the Town of Riverhead acting as governing board of the Community Development Agency does hereby ratify the authorization for the Supervisor, acting as Chairman of the Community Development Agency of the Town of Riverhead to execute a "Site Agreement" to authorize LIPA and National Grid to utilize a portion of the EPCAL property to store trucks and equipment to enable fifty five crews to swiftly respond to outages and assess major damage to transmission and distribution lines, substations and other infrastructure caused by Hurricane Irene; and

**BE IT FURTHER RESOLVED**, that all Town Hall Departments may review and obtain a copy of this resolution from the electronic storage device and, if needed, a certified copy of same may be obtained from the Office of the Town Clerk.

#### **THE VOTE**

Giglio ☒Yes ☐No  
Wooten ☒Yes ☐No

Gabrielsen ☒Yes ☐No  
Dunleavy ☒Yes ☐No

Walter ☒Yes ☐No

The Resolution Was ☒ Thereupon Duly Declared Adopted

## SITE ACCESS AGREEMENT

This Site Access Agreement (the "Agreement"), made this 30th day of August, 2011, by and between **Community Development for the Town of Riverhead and the Town of Riverhead ("Riverhead")** ("Licensor") a New York corporation, duly organized under the laws of the State of New York, with principal offices at 200 Howell Avenue, Riverhead, New York 11901 and **National Grid Electric Services LLC ("National Grid")** ("Licensee"), a New York limited liability corporation, duly organized under the laws of the State of New York, with principal offices at 175 East Old Country Road, Hicksville, New York 11801, as Agent for and on behalf of Long Island Lighting Company d/b/a LIPA ("LIPA"), with principal offices at 333 Earle Ovington Blvd., Uniondale, New York 11553. Licensor and/or Licensee are referred to herein individually as "Party" and collectively as the "Parties."

- A. **GENERAL-APPROVED ACTIVITIES:** National Grid/LIPA, their employees, agents, contractors and subcontractors may access the Henry Pfeifer Community Center and 1000 feet of the north end of the runway from the North gate at State Route 25 for the purpose of parking vehicles/equipment (the "Approved Activities"). It is agreed and understood that use of the runway shall not close or restrict the taxiway and instead the taxiway shall remain open to accommodate trucks and heavy equipment utilizing and traversing over and through the EPCAL property under separate agreement with the Community Development Agency and/or Town.

B. **TERMS OF ACCESS**

The Approved Activities on the Site are granted solely from the date first written above through September 15, 2011.

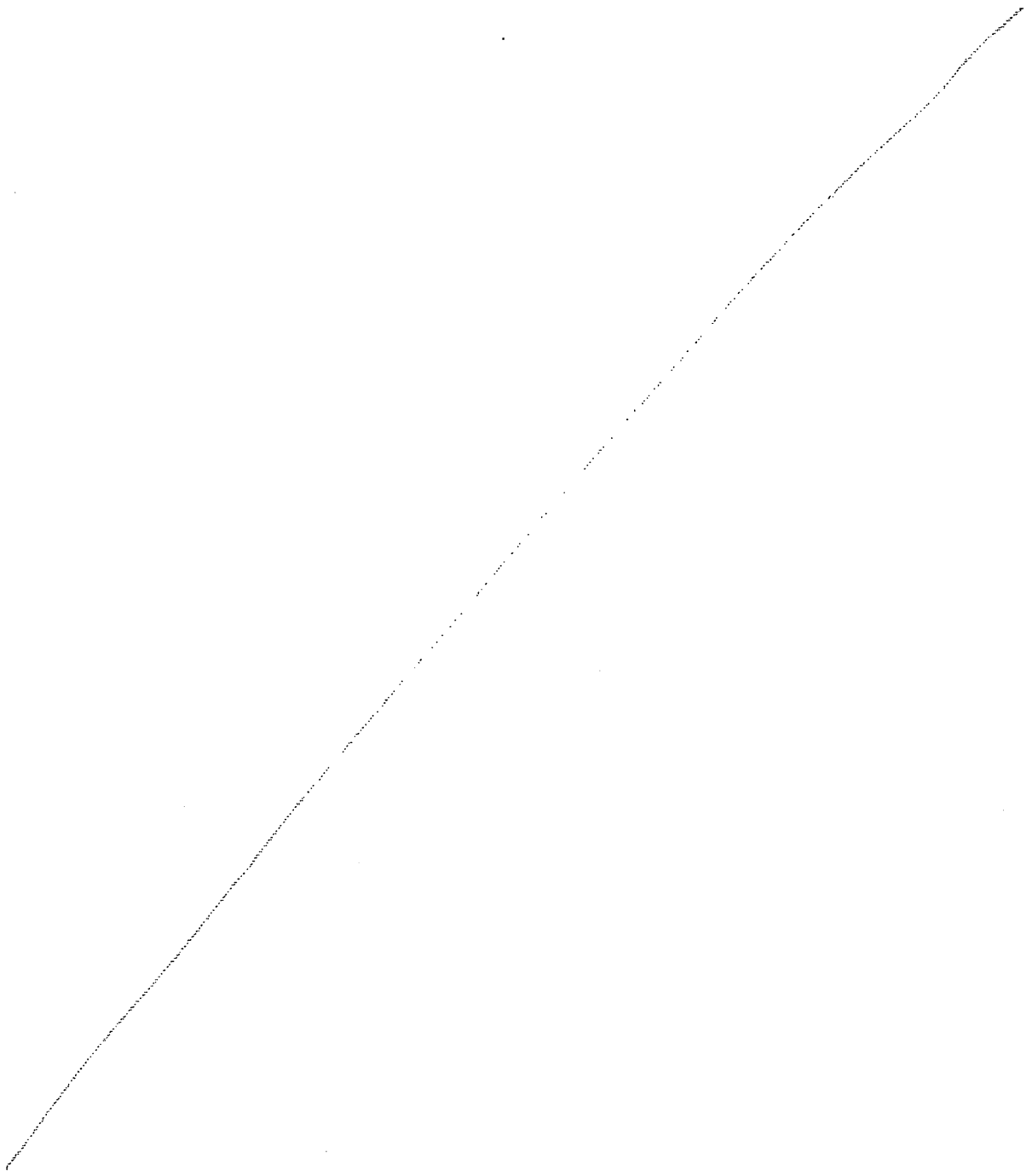
- C. **AUTHORIZATION:** Riverhead warrants and represents that they are authorized to enter into this Site Access Agreement on behalf of Property Owner.

In consideration of the mutual promises and agreements herein contained, the Parties agree as follows:

1. Limited Scope. This Agreement does not provide Site access other than to Licensee, its agents, employees, invitees and/or contractors/subcontractors specifically authorized by Licensor to engage in the Approved Activities.
2. Access by Licensor Representatives. Licensor may at all times have access to the Site for the purpose of reviewing the Approved Activities hereunder and inspecting, maintaining and repairing its facilities located on such Site.

D. **NOTIFICATION:**

National Grid/LIPA shall notify Ken Testa, Chief Engineer Town of Riverhead at 631 727-3200 ext 279 or Chief David Hagermiller 631-727-4500 ext 315 regarding access to the Site and subsequent vacating of the Site.



E. REMEDIES

Of Third Parties. No third party, except authorized subsidiaries, affiliates or assignees of National Grid and/or LIPA shall have any rights to enforce the terms of this Agreement.

F. COMPLIANCE WITH LAWS

National Grid/LIPA shall comply with any and all applicable laws, ordinances, permits or zoning requirements of the School District or any Federal, State or municipal body or agency, for the use of the Site for the Approved Activities.

G. INDEMNIFICATION/INSURANCE

National Grid/LIPA ("Licensee") shall hereby release, hold harmless and indemnify the CDA and the Town of Riverhead ("Licensor") from any liability arising in connection with Licensee's use of the Henry Pfeifer Community Center and 7000' runway ("Leased Space") as set forth in this Agreement.

Licensor will be held harmless by Licensee and Licensee shall defend and indemnify from and against any and all claims, demands, payments, suits, actions, recoveries, judgments, costs and expenses, including, without limitation, reasonable attorney's fees in connection therewith, of every nature, including but not limited to claims for bodily injury or death, by any third party, and by or on behalf of the contractors, agents, servants or employees ("Losses"), arising out of or in connection with Licensee's use and the use of its agents, servants, employees, or contractors of the Leased Space, unless the Losses are caused by or are the result of the misconduct or negligence of Licensor or any of Licensor's agents, servants, employees, licensees or invitees.

Licensor will be held harmless by Licensee and Licensee agrees to defend and indemnify Licensor for property damage, including damage to the Leased Space, arising out of or in connection with Licensee's use and the use of its agents, servants, employees, or contractors of the Leased Space, unless the damages are caused by or are the result of the misconduct or negligence of Licensor or any of Licensor's agents, servants, employees, licensees or invitees.

Notwithstanding any provisions herein to the contrary, it is understood and agreed that all property kept, installed, stored or maintained in or upon the Licensed Space by Licensee will be so installed, kept, stored or maintained at the risk of Licensee. Licensor will not be responsible for any loss or damage to equipment owned by Licensee which might result from tornadoes, lightning, wind storms or other Acts of God, provided, however, Licensor will be responsible for and agrees to hold Licensee harmless from any liability (including reimbursement of reasonable legal fees and all costs) for damages to any person or any property in or upon the Leased Space arising out of the misconduct or negligence of Licensor or any of Licensor's agents, servants, employees, licensees or invitees.

Except for willful misconduct, neither Licensor nor Licensee will in any event be liable in damages for each other's business loss, business interruption or other consequential damages of whatever kind or nature, regardless of the cause of the damages, and each party, and anyone claiming by or through them, expressly waives all claims for the damages.

Prior to utilizing the Site, National Grid/LIPA will furnish to the Property Owner a Certificate of Insurance and will include the Property Owner as additional insured.

H. MAINTENANCE/RESTORATION

Licensee will be responsible for maintaining the Site in clean, orderly condition, good repair and in a secured condition throughout the term. Upon completion of the Approved Activities, National Grid/LIPA, at their expense, shall repair any damage to the Site or remit a mutually agreed upon cost, if any.

I. GOVERNING LAW

This Agreement shall be governed by the laws of the State of New York except for conflict of law issues.

J. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding between the Parties for the Approved Activities, and no amendments, additions, or modifications hereto shall be valid unless in writing and signed by all the Parties hereto.

K. BINDING EFFECT

This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns.

L. ASSIGNMENT

This Agreement and the rights and obligations associated herewith may not be assigned without prior written consent of the other party.

M. SEVERABILITY

If any provision of the Agreement shall be declared to be unenforceable, the remaining provisions hereof shall remain in full force and effect.

N. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be an original and which shall constitute the same instrument.

O. WAIVER

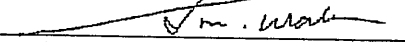
No delay or omission by either party in the exercise of any right under this Agreement shall impair any such right or shall be taken, construed or considered as a waiver or relinquishment thereof, but any such right may be exercised from time to time and as often as may be deemed expedient. If any agreement or covenant herein shall be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

P. ARTICLE

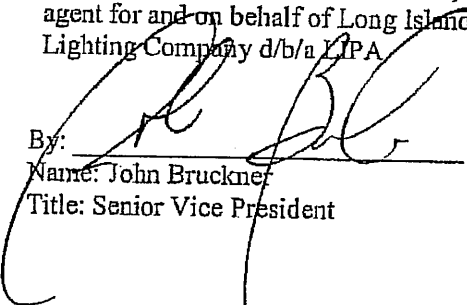
The article headings and other titles used in this Agreement are for convenience only and shall not affect the construction of any terms of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives on the date first written above.

Community Development for the Town of  
Riverhead and the Town of Riverhead

By:   
Name: Sean M. Walter  
Title: Supervisor

National Grid Electric Services LLC, as  
agent for and on behalf of Long Island  
Lighting Company d/b/a LIPA

By:   
Name: John Bruckner  
Title: Senior Vice President